

APPLICANTS:
Walter & Cheryl Rupp

REQUEST: Special exception to locate
a personal care boarding home in the
Agricultural District

HEARING DATE: September 20, 2006 and
December 18, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5547

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Walter A. Rupp

CO-APPLICANT: Cheryl M. Rupp

LOCATION: 2278 Baldwin Mill Road – Land of R. Elliot, Fallston
Tax Map: 39 / Grid: 4B / Parcel: 304 / Lot: 1
Fourth (4th) Election District

ZONING: AG / Agricultural

REQUEST: Special exception, pursuant to Section 267-53F(7) of the Harford County Code, to permit a personal care boarding home in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants request a special exception to operate a personal care boarding home for “3 residents to 5 residents with a possible 14 residents.”

The first hearing on this case was held on September 20, 2006. At that time the Applicant, Walter A. Rupp, testified that he and his wife now operate an assisted living facility known as the “House of Jubilee”, a State of Maryland licensed assisted living facility with a State permit for up to 4 boarders. The Applicants now wish to increase the number of boarders up to 6, with a possible expansion of up to 14 boarders. Mr. Rupp states that a special exception is now necessary for him to do so.

Mr. Rupp testified that most assisted living facilities in Harford County have an average of 15 boarders. The Applicants feel that their property provides a homelike setting. It is a residence for the Applicants and their 3 minor children. The boarders also feel like it is a residence, and are more comfortable in this homelike setting.

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For the 3 years that the “House of Jubilee” has been operating there has been no impact on the neighbors. Most of the neighbors are not aware of its operation.

Mr. Rupp believes it will not be a problem to increase the size of the septic area to enable him to increase the number of boarders at his property. Mr. Rupp is aware of the Harford County Health Department letter of July 12, 2006 from Woody Williams which indicated that the present septic system;

“. . . has been sized for ten full time occupants, including your family of five. That would leave you with a capacity of four boarders and one full time worker. Any expansion beyond this arrangement would require soil percolation tests and upgrades to the septic system.”

Mr. Rupp asserted that if approval were granted for his request, he would be able to increase the size of the septic system and satisfy the Health Department. However, he had no written evidence of this.

Mr. Rupp requested immediate approval for 6 boarders. This would enable him to go back to the Harford County Health Department and ask them for permission to expand.

Next testified Cheryl M. Rupp. Mrs. Rupp testified that with the 6 proposed boarders, the impact would be no different than if she and her husband had 9-12 children. There would be no adverse impact on the community.

On behalf of the Applicants testified Melissa Silverstein, a speech therapist with Upper Chesapeake Health Care. Ms. Silverstein is familiar with the House of Jubilee. No street sign indicates its presence. It is a very quiet operation; it is located in a relatively secluded area. The atmosphere of the home is very pleasant. Every resident has his or her own bedroom. Ms. Silverstein’s mother is a boarder at the House of Jubilee and she is very content there. According to Ms. Silverstein the residents are very happy. The facility is always kept clean. It is one of the best facilities of this type Ms. Silverstein has ever observed.

A number of neighbors appeared, through counsel, in opposition.

Upon cross-examination, Mr. Rupp noted that 5 boarders are presently living in the property. He has approval provide up to Level of Care 3, which allows hospice care. The Applicants also employ 2 full time workers. No fence surrounds the property, although there is some shrubbery and trees located around the perimeter.

Mr. Rupp explained that 5 bedrooms are on the first floor. On the lower level, the basement level, are located an additional 5 bedrooms. However, Mr. Rupp did not submit a layout of the basement level.

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In order to give the parties a more complete opportunity to address the application and discuss their various concerns, the hearing was continued.

The hearing recommenced on December 18, 2006. At that time, the neighboring opponents and the Applicants submitted a list of conditions which they requested be made a part of any approval. Those conditions are as follows:

1. The Applicants shall obtain all necessary permits and inspections for the use.
2. The Applicants are limited to no more than 6 boarders, who are having care provided at this location, and no more than 2 full time care providers, other than Mr. Rupp. Any additional boarders would require further Board approval.
3. At least one of the Applicants shall meet all necessary State Department of Health and Mental Hygiene personal licensing requirements.
4. The special exception is personal to the Applicants, and will terminate at such time as the personal care boarding home business terminates; the subject property is sold or otherwise transferred or the State license to operate the personal care boarding home at this location is attempted to be transferred to any other individual or entity.
5. As may be applicable, Federal and State Health Department requirements concerning the disposal of medical waste shall be strictly adhered to.
6. The Applicants shall obtain and conform to all licensing requirements as required by applicable Federal, State and County regulating agencies.
7. The Applicants shall obtain and conform to all required applicable Federal, State and County Building and Fire Code Regulations.

The Applicants then presented additional testimony.

Mr. Rupp stated that he purchased the subject property, which consists of about 3 acres, in 1987. He, his wife and 3 children reside there. The basement level is in actuality a walk-out.

An additional report from the Harford County Department of Health had been obtained by the Applicants. That report, dated December 11, 2006 finds that, with the Applicant having made an upgrade to the existing septic system:

“ . . . the Health Department will allow a maximum of two bedroom addition to the property at this time. In terms of an assisted living facility, the Health Department would allow a total of 14 occupants in the dwelling. The occupants include the five permanent family members and any full time employees.”

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Accordingly, Mr. Rupp believes that the septic system is now satisfactory to service a total of 14 people, which would allow up to 7 boarders. However, Mr. Rupp has agreed to have no more than 6 boarders on-site. All the boarders will be on the first floor of the property, not in the basement level. Mr. Rupp identified a plan of the first floor level which graphically shows the bedrooms and related baths for each living area.

The population of the House of Jubilee fluctuates, with a total of 4 residents as of the December hearing.

The doors on the home will be secured by a key pad system for security purposes. This will not prevent egress, but will alert the Applicants of any resident attempting to leave. Each bedroom unit has its own access to a bath which has fixtures specifically designed for people in need of assistance.

Mr. and Mrs. Rupp's family will reside on the lower level, although the family will be involved with and will interact with the boarders.

Mr. Rupp explained that the home was built with the needs of disabled individuals in mind. Mrs. Rupp was in a serious car accident four years ago and needs some assistance with her daily living activities. Since the house was designed for her needs, Mr. and Mrs. Rupp believe it became an ideal facility to house elderly people who are also in need of assistance. Both Mr. and Mrs. Rupp are familiar with the level of care generally provided in assisted living facilities, and they believe they can provide a better level of care than is the average.

Very little traffic will be generated by the use. The topography of the property creates a very secluded house location. The neighborhood is very quiet, and the house itself is buffered to a large extent by existing tree and vegetation growth.

Next for the Applicant testified Jacqueline Seneschal who identified herself as a planner with KCI Technologies, Inc. Ms. Seneschal was offered and accepted as an expert in zoning and community planning.

Ms. Seneschal, who is familiar with the case file, the Harford County Master Plan and Development Regulations, indicated that the Applicant meets all specific standards set forth in the Harford County Development Regulations.

Ms. Seneschal stated that the lot is of sufficient size so as to allow the proposed 4 boarders. At least 8 parking spaces are available with will provide adequate off-street parking. The house itself is a single family home similar to others in the neighborhood. Accordingly, the use complies with all applicable specific special exception standards.

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In addressing the Limitations, Guides and Standards of Section 267-9I of the Development Regulations, Ms. Seneschal, further, agreed that all general standards are met. The use will not be an adverse impact on the area. It will provide a good and needed use as the elderly population of Harford County continues to increase. Maryland Route 165, on which the subject property is located, has a traffic volume of almost 7,500 cars per day. The additional traffic generated by the proposed use will be inconsequential. She sees no adverse fiscal impact. Fire and police services are adequate and will not be adversely impacted by the proposed use. There are no parks, schools or other public institutions which will be adversely affected by the use.

Ms. Seneschal stated that the septic system is adequate for the property. The proposed use is consistent with the Harford County Master Land Use Plan. There are no sensitive environmental features identified which will be affected, nor are there any cultural or historic landmarks identified which will be affected by the proposed use.

Accordingly, Ms. Seneschal is of the opinion that the proposed use complies with all specific and generalized standards, and should be approved. The property is suitable for the use proposed.

In support testified Lauren Andrews, whose 91 year old aunt resides at the House of Jubilee. Her aunt is very happy there. Ms. Andrews believes it is a good facility.

Nest testified Mike Ciavolino who is familiar with many assisted living facilities and nursing homes throughout the County. He visits many facilities and he believes the House of Jubilee ranks very high compared to most facilities he sees.

Michael Kenley then testified as a friend of the Applicants who is familiar with their assisted living facility. He believes it is a good, well maintained and positive operation.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. The Department supports the request provided the number of boarders does not exceed 6. He believes the conditions suggested by the Applicants and the neighbors are appropriate conditions which should be included as part of any favorable recommendation.

There was no evidence or testimony given in opposition.

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APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-53F(8) of the Harford County Code which states:

- “(8) Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*
- (a) The proposed use shall be located in a single-family detached dwelling.*
 - (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*
 - (c) maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.*
 - (d) Adequate off-street parking shall be provided.*
 - (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”*

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

Section 267-52 of the Code, General Regulations states:

- “A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*

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- C. *Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. *The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*
- E. *In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants request a special exception to operate an assisted living facility in their home for up to 6 boarders.

The house is an attractive, single family residence located on an approximately 3 acre parcel off Baldwin Mill Road in the Jarrettsville area of Harford County. A fair amount of mature, vegetative screening exists around the perimeter of the property. Residing on the property are the 2 Applicants and their 3 minor children. The house has been uniquely designed in order to provide certain amenities to Mrs. Rupp, who was injured in a car accident some years ago and is, as a result, partially disabled.

Testimony indicated that the Applicants have, in fact, been operating an assisted living facility for some 3 years. No explanation was given as to how this has been accomplished without a Harford County Special Exception Permit. Nevertheless, a proper State license had been issued, and was in fact offered into evidence.

There is no dispute that the Applicants meet the specific requirements of Section 267-53F(8) as follows:

- (8) *Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*

The property is located in an agricultural district.

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- (a) *The proposed use shall be located in a single-family detached dwelling.*

The facility is a single family detached dwelling.

- (b) *The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*

The use meets the minimum lot size requirements.

- (c) *Maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.*

The Applicants easily meet this requirement.

- (d) *Adequate off-street parking shall be provided.*

Uncontradicted testimony is that adequate off-street parking exists.

- (e) *Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.*

This request is not applicable.

An unnecessary source of uncertainty, and perhaps confusion, was introduced by the Applicants in their original request for a permit allowing “a possible 14 residents.” During the first hearing in September a number of neighbors appeared who, through counsel, expressed concern about the proposal. Using good judgment, the Applicants have since amended their request and ask for no more than 6 boarders. The neighbors have agreed to not oppose such a limited request, provided certain conditions are imposed.

A review and application of the Limitations, Guides and Standards of the Harford County Development Regulations, Section 267-9I demonstrates no adverse findings.

Section 267-9I is addressed as follows:

- (1) *The number of persons living or working in the immediate area.*

The proposed use will not adversely impact people living or working in the area, nor will the population of this relatively sparsely populated area adversely impact the proposed use.

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- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Uncontradicted testimony is that the proposed use will generate an inconsequential amount of traffic, certainly not traffic of a level which would adversely impact the road network.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposed use is permitted in the agricultural district, with Board approval. There should be no adverse fiscal impact on the community, nor will it impact the growth of the neighborhood or community.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed use should generate no such impacts.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Fallston and Jarrettsville Volunteer Fire Departments will provide the primary fire protection and emergency assistance to the site. A company of the Applicant's choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The use is consistent with generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

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- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

Testimony of record, and the finding of the Harford County Department of Planning and Zoning is that the proposal is consistent with the Harford County 2004 Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such features, or opportunities, have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Accordingly, all general specific standards are met by the Applicant. No negative impacts are found. However, the application must nevertheless be reviewed in light of the standard of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), which provides as follows:

“ . . . the appropriate standard to be used in determining whether a requested special exception use would have an adverse affect and, therefore, it should be denied is whether there are facts and circumstance that showed that the particular use proposed at the particular location proposed would have any adverse affects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

Accordingly, it can be seen that the proposed use must be approved even if it were to have adverse impacts similar to those inherently associated with such a special exception. However, as can be seen from the above analysis, there are no adverse impacts of any nature to be expected from the propose use, if operated as agreed and as will be conditioned herein.

Furthermore, a special exception is, in fact, a use which has been legislatively determined to be compatible with other existing uses within a zone provided all general and specific conditions are met. It is found that all conditions are met, no adverse impact will result, the Schultz v. Pritts test is adequately met, and that the proposed special exception may not be denied.

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CONCLUSION:

Accordingly, it is recommended that the proposed special exception for six (6) boarders in the Applicants' assisted living facility is approved, subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for the use.
2. The Applicants are limited to no more than six (6) boarders, who are having care provided at this location, and no more than two (2) full-time care providers, other than Mr. Rupp.
3. At least one of the Applicants shall meet all necessary State Department of Health and Mental Hygiene personal licensing requirements.
4. The special exception is personal to the Applicants, and will terminate at such time as the personal care boarding home business terminates; the subject property is sold or otherwise transferred or the State license to operate the personal care boarding home at this location is attempted to be transferred to any other individual or entity.
5. As may be applicable, Federal and State Health Department requirements concerning the disposal of medical waste shall be strictly adhered to.
6. The Applicants shall obtain and conform to all licensing requirements as required by applicable Federal, State and County regulating agencies.
7. The Applicants shall obtain and conform to all required applicable Federal, State and County Building and Fire Code Regulations.
8. Any further expansion of the assisted living facility will require additional Board of Appeals approval.

Date: January 8, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 6, 2007.